

TO: James Hall, Chief Operating Officer

FROM: Jane Mosher-Canty

RE: Policy Updates

DATE: July 27, 2021

It is my recommendation that the attached Massachusetts Association of School Committee's Policy, File ACAB, entitled HARASSMENT (Exhibit #1) be adopted by the Lowell School Committee. The basis for my recommendation is that the district's existing policy, ACAB, entitled SEXUAL HARASSMENT (Exhibit #2) does not address Harassment in general, nor does it address Sexual Harassment to the extent required by the law today. MASC's Policy, as developed, reflects the changes made in 2020 to the Title IX Regulations that are required of all schools- with the specific obligation to examine our policy, procedures and/or guidelines. As one can see from the detail of the policy, a big emphasis has been put on the handling of sexual harassment complaints.

Once approved, the definition, policy and procedures for investigating and responding to complaints of sexual harassment will be included in the Parent and Student Handbook; in addition to developing and providing prescribed training for Title IX staff and all other school staff.



HARASSMENT

Harassment of students by other students, employees, vendors and other 3rd parties will not be tolerated in the Lowell Public Schools. The alleged harassment must involve conduct that occurred within the school's own program or activity, such as whether the harassment occurred at a location or under circumstances where the school owned, or substantially controlled the premises, exercised oversight, supervision or discipline over the location or participants, or funded, sponsored, promoted or endorsed the event where the alleged harassment occurred, against a person in the United States. This policy is in effect while students are on school grounds, School District property or property within the jurisdiction of the School District, school buses, or attending or engaging in school sponsored activities.

Harassment prohibited by the District includes, but is not limited to, harassment on the basis of race, sex, gender identity, creed, color, national origin, sexual orientation, religion, marital status or disability. Students whose behavior is found to be in violation of this policy will be subject to disciplinary action up to and including suspension or expulsion pursuant to disciplinary codes. Employees who have been found to violate this policy will be subject to discipline up to and including, termination of employment, subject to contractual disciplinary obligations.

Employee-to-Student Harassment means conduct of a written, verbal or physical nature that is designed to embarrass distress, agitate, disturb or trouble students when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a student's education or of a student's participation in school programs or activities; or
- Submission to or rejection of such conduct by a student is used as the basis for decisions affecting the student.

Student- to-Student Harassment means conduct of a written, verbal, or physical nature that is designed to embarrass, distress, agitate, disturb or trouble students, when:

- Such conduct has the purpose or effect of unreasonably interfering with a student's performance or creating an intimidating or hostile learning environment.

Harassment as described above may include, but is not limited to:

- Written, verbal, or physical (including texting, blogging, or other technological methods) harassment or abuse;
- Repeated remarks of a demeaning nature;
- Implied or explicit threats concerning one's grades, achievements, or other school matter.
- Demeaning jokes, stories, or activities directed at the student.

By law, what constitutes harassment is determined from the perspective of a reasonable person with the characteristic on which the harassment is based. Individuals should consider how their words and actions might reasonably be viewed by others.

The District will promptly and reasonably investigate allegations of harassment through designation of Title IX Coordinator or building based employees, who may include principals or their designees. The superintendent will recommend, in consultation with the principals, opportunities to the designated recipients for appropriate training.

Sexual harassment is unwelcome conduct of a sexual nature. The definition includes unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity it also, includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual

nature. Sexual harassment includes conduct by an employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct, often called quid pro quo harassment and, sexual assault as the Federal Clery Act defines that crime. Sexual violence is a form of sexual harassment. Sexual violence, as the Office of Civil Rights (OCR) uses the term, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion. Massachusetts General Laws Ch. 119, Section 51 A, requires that public schools report cases of suspected child abuse, immediately orally and file a report within 48 hours detailing the suspected abuse to the Department of Children and Families. For the category of sexual violence, in addition to Section 51A referrals these offences and any other serious matters shall be referred to local law enforcement. Schools must treat seriously all reports of sexual harassment that meet the definition of sexual harassment and the conditions of actual notice and jurisdiction as noted above. Holding a school liable under Title IX can occur only when the school knows of sexual harassment allegations and responds in a way that is deliberately indifferent (clearly unreasonable in light of known circumstance).

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment, depending on the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances—whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating an environment that is hostile, offensive, intimidating, to male, female, or gender non-conforming students or employees may also constitute sexual harassment.

Because the District takes allegations of harassment, including sexual harassment, seriously, we will respond promptly to complaints of harassment including sexual harassment, and following an investigation where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting an environment that is free of harassment including sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment or sexual harassment.

Retaliation against a complainant, because they have filed a harassment or sexual harassment complaint or assisted or participated in a harassment or sexual harassment investigation or proceeding, is also prohibited. A student or employee who is found to have retaliated against another in violation of this policy will be subject to disciplinary action up to and including student suspension and expulsion or employee termination.

The complainant does not have to be the person at whom the unwelcome sexual conduct is directed. The complainant, regardless of gender, may be a witness to and personally offended by such conduct.

NOTICE OF SEXUAL HARASSMENT

The regulations require a school district to respond when the district has actual notice of sexual harassment. School districts have actual notice when an allegation is made known to any school employee. Schools must treat seriously all reports of sexual harassment that meet the definition of harassment and the conditions of actual notice and jurisdiction as noted whether or not the complainant files a formal complaint. Holding a school liable under Title IX can occur only when the school knows of sexual harassment allegations and responds in a way that is deliberately indifferent (clearly unreasonable in light of known circumstances). Schools are required to investigate every formal complaint and respond meaningfully to every known report of sexual harassment.

The regulation highlights the importance of supportive measures designed to preserve or restore access to the school's education program or activity, with or without a formal complaint. Where there has been a finding of responsibility, the regulation would require remedies designed to restore or preserve access to the school's education program or activity.

DUE PROCESS PROTECTIONS

Due process protections include the following:

- 1) A presumption of innocence throughout the grievance process, with the burden of proof on the school;
- 2) A prohibition of the single investigator model, instead requiring a decision-maker separate from the Title IX Coordinator or investigator;
- 3) The clear and convincing evidence or preponderance of the evidence, subject to limitations;
- 4) The opportunity to test the credibility of parties and witnesses through cross examination, subject to "rape shield" protections;
- 5) Written notice of allegations and an equal opportunity to review the evidence;
- 6) Title IX Coordinators, investigators, and decision-makers must be free from bias or conflict of interest;
- 7) Equal opportunity for parties to appeal, where schools offer appeals;
- 8) Upon filing a formal complaint the school must give written notice to the parties containing sufficient details to permit a party to prepare for any initial interview and proceed with a factual investigation. For K-12 schools a hearing is optional but the parties must be allowed to submit written questions to challenge each other's credibility before the decision-maker makes a determination. After the investigation, a written determination must be sent to both parties explaining each allegation, whether the respondent is responsible or not responsible, including the facts and evidence on which the conclusion was based by applying either the preponderance of the evidence or the clear and convincing standard; however, a school can use the lower preponderance standards only if it uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction. As long as the process is voluntary for all parties, after being fully informed and written consent is provided by both parties, a school may facilitate informal resolution of a sexual complaint.

A district may establish an informal investigation process that may, upon the request of the complainant be followed by a formal process.

The Superintendent in consultation with the Title IX Coordinator shall designate the principal of each school in the district, or their designee (or some other appropriate employee(s)) as the initial entity to receive the sexual harassment complaint. Also, in a matter of sexual harassment, the district shall require

that the Title IX Coordinator be informed, as soon as possible, of the filing of the complaint. Nothing in this policy shall prevent any person from reporting the prohibited conduct to someone other than those above designated complaint recipients. The investigating officer may receive the complaint orally or in writing, and the investigation shall be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances and in compliance with applicable law. The investigation will be prompt, thorough, and impartial, and will include, at least, a private interview with the person filing the complaint and with witnesses. Also, the alleged harasser will be interviewed. When the investigation is completed, the complaint recipient will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

RECORD KEEPING REQUIREMENTS

Schools must create and maintain records documenting every Title IX sexual harassment complaint. This could include mediation, restorative justice, or other models of alternative dispute resolution. Schools must keep records regarding the school's response to every report of sexual harassment of which it becomes aware even if no formal complaint was filed, including documentation of supportive matters offered and implemented for the complainant.

This policy, or a summary thereof that contains the essential policy elements shall be distributed by the Lowell School District to its students and employees within the Handbook and each parent or guardian shall sign that they have received and understand the policy. Each school will maintain a copy of the parent/guardian signature indicating receipt of the policy.

Lowell Public Schools District's Title IX Coordinator: **Ms. Latifah Phillips, Chief of Educational Equity and Community Empowerment, (978) 674-4326**

If you have a complaint, please contact the office of **Ms. Latifah Phillips, Chief of Educational Equity and Community Empowerment, (978) 674-4326**.

Please note that the following entities may have specified time limits for filing a claim.

The Complainant may also file a complaint with:

- The Mass. Commission Against Discrimination, 1 Ashburton Place, Room 601
Boston, MA 02108
Phone: 617-994-6000
TTY: 617-994-6196
Fax: 617-994-6024
Email: assistanttochairman@state.ma.us
- Office for Civil Rights (U.S. Department of Education)
5 Post Office Square, 8th Floor
Boston, MA 02109
Phone: 617-289-0111
TDD: 1-800-877-8339
Fax: 617-289-0150
Email: OCR.Boston@ed.gov
- Problem Resolution System Office, Massachusetts Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148-4906
Phone: 781-0338-3700
Fax: 781-338-3710
Email: compliance@doe.mass.edu

- The United States Equal Employment Opportunity Commission,
John F. Kennedy Bldg.
475 Government Center
Boston, MA 02203
Email: <https://www.eeoc.gov/filing-charge-discrimination>

LEGAL REF.: M.G.L. 151B:3A
Title IX of the Education Amendments of 1972
BESE 603 CMR 26:00
34 CFR 106.44 (a), (a)-(b)
34 CFR 106.45 (a)-(b) (1)
34 CFR 106.45 (b)(2)-(b)(3,4,5,6,7) as revised through June 2020

Note: A summary of the attached Policy, as adopted, must be sent to parents/guardians, students, employees, unions, and prospective employees of the school district including Title IX Coordinator(s), investigator(s) and the decision-maker. The above referenced employees must attend training sessions on the implementation of the Policy.

SOURCE: MASC July 2020

☐ ▾ Lowell - Online Policy Manu

☐ SCHOOL COMMITTEE PC **File: ACAB - SEXUAL HARASSMENT**

☐ ▾ SECTION A - FOUNDATION

☐ File: AA - SCHOOL DIS

☐ File: AB - THE PEOPLE

☐ File: AC - NONDISCRIM

☐ File: AC-R - NONDISCR

☐ File: AC-E - NONDISCR

☐ File: ACA - NONDISCR

☐ File: ACAB - SEXUAL H

☐ File: ACE - NONDISCRIM

☐ File: AD - EDUCATION/

☐ File: ADA - SCHOOL DI

☐ File: ADC - SMOKING C

☐ File: ADDA - C.Q.R.I. RE

☐ File: AE - COMMITMEN

☐ ▸ SECTION B - BOARD GOV

☐ ▸ SECTION C - GENERAL S

☐ ▸ SECTION D - FISCAL MA

☐ ▸ SECTION E - SUPPORT S

☐ ▸ SECTION F - FACILITIES

☐ ▸ SECTION G - PERSONNE

☐ ▸ SECTION H - NEGOTIATI

☐ ▸ SECTION I - INSTRUCTIC

☐ ▸ SECTION J - STUDENTS

☐ ▸ SECTION K - COMMUNIT

☐ ▸ SECTION L - EDUCATION

All persons associated with this school system, including, but not necessarily limited to, the administration, the staff, and the students, are expected to conduct themselves at all times so as to provide an atmosphere free from sexual harassment. Any person who engages in sexual harassment while acting as a member of the school community will be in violation of this policy.

Definition of Sexual Harassment: Unwelcome sexual advances; requests for sexual favors; or other verbal or physical conduct of a sexual nature may constitute sexual harassment where:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment or educational development.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment or education decisions affecting such individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or educational performance or creating an intimidating, hostile, or offensive working or educational environment.

The Grievance Officer: The Superintendent will annually appoint a sexual harassment grievance officer who will be vested with the authority and responsibility of processing all sexual harassment complaints in accordance with the procedure set out below:

Procedure

1. Any member of the school community who believes that he or she has been subjected to sexual harassment will report the incident(s) to the grievance officer.
2. The grievance officer will attempt to resolve the problem in an informal manner through the following process:
 - a. The grievance officer will confer with the charging party in order to obtain a clear understanding of that party's statement of the facts.
 - b. The grievance officer will then attempt to meet with the charged party in order to obtain his or her response to the complaint.
 - c. The grievance officer will hold as many meetings with the parties as is necessary to gather facts.
 - d. On the basis of the grievance officer's perception of the situation he or she may;
 - (1) Attempt to resolve the matter informally through reconciliation.
 - (2) Report the incident and transfer the record to the superintendent or his/her designee, and so notify the parties by certified mail.
3. After reviewing the record made by the grievance officer, the superintendent or designee may attempt to gather any more evidence necessary to decide the case, and there-after impose any sanctions deemed appropriate, including a recommendation to the committee for termination or expulsion. All matters involving sexual harassment complaints will remain confidential to the extent possible.

LEGAL REFS.: Title VII, Section 703, Civil Rights Act of 1964 as amended 45

Federal Regulation 74676 issued by EEO Com.

EXHIBIT